

§ 20.79

unless the creditor agency determines that § 20.81(d) applies and further informs the debtor of the basis for its termination;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the administrative law judge grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5 U.S.C., part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729-3731 of title 31 U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001 and 1002 of title 18 U.S.C., or any other applicable statutory authority;

(12) Of any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(c) Creditor Labor Department agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, administrative offset from other sources of funds, and the assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, rea-

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sonable action shall be taken to obtain a current address.

(e) The creditor Labor Department agency shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

(f) In any internal Labor Department collection, the provisions of § 20.78 paragraphs (a) through (e) need not be applied to any adjustment to pay which is not considered to be the result of collection of a debt, such as excess pay or allowances caused by:

(1) An employee's election of coverage or a change of coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated in four pay periods or less; or

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays, if the amount to be recovered was accumulated in four pay periods or less.

§ 20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the notice specified in § 20.78(b), the debtor may request to examine and copy agency records pertaining to the debt.

§ 20.80 Opportunity for repayment.

(a) The creditor Labor Department agency shall afford the debtor the opportunity to (1) repay the debt or (2) enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor and the creditor agency. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or

amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience, or the agency otherwise determines that offset would be contrary to sound judgment.

§ 20.81 Review of the obligation.

(a) The debtor shall have the opportunity to obtain a hearing by an administrative law judge of the agency's determination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency, and except as provided in § 20.75(c), review by an administrative law judge is to be the exclusive administrative review remedy on the agency's determination under these regulations.

(b) The debtor seeking a hearing shall make the request in writing to the Chief Administrative Law Judge, pursuant to 29 CFR part 18, not more than 15 days from the date the notice of proposed salary offset was received by the debtor. The request for hearing shall be signed by the employee and state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes supports his or her position.

(c) The hearing ordinarily shall be based on written submissions and documentation by the debtor. However, an opportunity for an oral hearing shall be provided an individual debtor when the administrative law judge determines that:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) An individual debtor requests reconsideration of the debt and the administrative law judge determines that the question of the indebtedness cannot be resolved by review of the docu-

mentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or

(3) In other situations in which the administrative law judge deems an oral hearing appropriate.

Unless otherwise required by law or these regulations, any oral hearing under this section shall be conducted under the procedures in 29 CFR part 18. Except as provided under § 20.79, the provisions for discovery shall not be applicable unless otherwise ordered by the administrative law judge. Procedural and evidentiary rules shall be relaxed by the administrative law judge to provide informality and to facilitate the hearing.

(d) Agencies may effect a salary offset against the current pay account of a debtor prior to the completion of the hearing procedures required by this subpart, if failure to initiate the offset would substantially prejudice the agency's ability to collect the debt; for example, if the employee's anticipated period of employment with the Government would not reasonably permit the completion of the hearing and recovery of the debt prior to termination of employment. Offset prior to completion of the hearing must be promptly followed by the completion of that hearing.

(e) If the debtor seeking a hearing under this section makes the request for review of the obligation after the expiration of the period for filing as described in paragraph (b) of this section, the administrative law judge may accept the request for hearing if the debtor can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(f) Upon completion of the hearing, the administrative law judge shall transmit to the debtor a written decision. This decision shall state, at a minimum: The facts purported to evidence the nature and origin of the alleged debt; the administrative law judge's findings and conclusions, as to the employee's and/or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule. If appropriate, the notification shall also indicate any